

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**GREAT WHITE BEAR, LLC**

**Plaintiff,**

**-against -**

**MERVYNS, LLC,**

**Defendant.**  
-----X

**06 Civ. 13358 (RMB)(FM)**

**DECLARATION OF DANNY  
FODIMAN IN OPPOSITION  
TO MOTION FOR JUDGMENT  
ON THE PLEADINGS AND  
IN SUPPORT OF CROSS-  
MOTION TO AMEND**

**DANNY FODIMAN**, hereby declares subject to the penalties of perjury pursuant to 28 U.S. C. § 1746:

1. I am the Vice President at Plaintiff Great White Bear, LLC ("Great White Bear") and am the "Danny Fodiman" referenced in paragraphs 7, 9, 10 and 14 of the Amended Complaint of Great White Bear along with Glenn Sands and my father Sandy Fodiman. I have personal knowledge of the facts stated in this Declaration.

2. I first refer to the following circumstances accurately stated in the Complaint for the context in which a "writing in confirmation," quoted below, was sent to Scott Jeffries, a Senior Buyer of Juniors Sportswear at Mervyns, who replied that the agreed volume would be met with orders in the last twelve months of the eighteen month period. Because Great White Bear needed to give a guarantee of a minimum amount of business to Rampage per the special license for Collections, Mervyns through Scott Jeffries committed to placing orders for \$13.2 million at cost allowing for a 10% deviation down (or \$11.7 million) over an eighteen-month period per the "R for Rampage" Collections license; and Great White Bear accepted this commitment and relied upon and acted upon it by in turn extending a guarantee to Rampage of \$5 million business for 18 months at an 8% royalty, entailing a \$400,000 payment by Great White Bear to Rampage. When the next orders came in to Great White Bear from Mervyns, however, those orders were smaller than expected. Glenn Sands, Sandy Fodiman and me at Great White Bear thus questioned whether Mervyns would be hitting the agreed upon numbers per the agreement between Mervyns and Great White Bear, and my father Sandy Fodiman placed a call to Mervyns's Scott Jeffries raising that

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concern. Mervyns's Scott Jeffries returned that call to Great White Bear and reassured us that Mervyns would be making up the initial "light" orders. (See Declaration of Philip A. Byler, Esq. Ex. A: Complaint, ¶¶ 10-12.)

3. It was in this context that at the request of my father (Sandy Fodiman), I sent an e-mail to Scott Jeffries at Mervyns, and Scott Jeffries immediately responded. The e-mail exchange is the Bates stamped document P01091 and attached to this Declaration as Exhibit A. My e-mail stated:

"Hi Scott[,] Sandy asked me to forward this message to you. He was concerned after the conversation he had with you the other day. Based upon your original phone message which told Sandy that the collections would be \$9,000,000 at cost and active would be \$4,200,000 at cost (13,200,000) over an 18 month period he wanted to know if we would be able to hit the numbers you had given him. That would translate based on your message to \$120,700,000 in retail sales at a 38% maintained guaranteed margin with the initial IMU [initial mark up] at 67%. The reason for this concern is the guarantees which we have already given Rampage. I realize that you had said the number could be aggressive and maybe 10% high but our guarantees are substantial. Please bear this in mind."


(P 01091.) Scott Jeffries responded about one-half hour later:

"I'll make it up in the last 12 months. Nothing else I can do in this season unless my sales plan is raised to accommodate."

(P 01091.)

The declare under the penalty of perjury that the foregoing is true and correct.

**Dated: New York, New York  
February 27, 2007**

  
\_ /s/ **Danny Fodiman** \_\_\_\_\_  
**Danny Fodiman**

**YAHOO! MAIL**Welcome, **dfodiman**  
[Sign Out, My Account][Mail Home](#) - [Mail Tutorials](#) - [Help](#)**I want to  
become a...  
Click here to  
find out how.** Accountant  
 Bounty Hunter  
 Counselor  
 CPA Detective  
 Developer  
 Engineer  
 Finance Criminal Investigator  
 Database Administrator  
 Network Specialist  
 Software Professionals Graphic Designer  
 Project Manager  
 Sales  
 Web Developer Paralegal  
 Publicist  
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Business Info

**Mail** ▾ **Addresses** ▾ **Calendar** ▾ **Notepad** ▾**Mail For Mobile** - **Mail Upgrades** - **Options****Check Mail****Compose****Search Mail****Search the Web****APPLY NOW!** A card in 3 days  
for bad credit\*[Previous](#) | [Next](#) | [Back to Search Results](#)**Delete****Reply** ▾**Forward** ▾**Spam****Move...** ▾This message is not flagged. [ [Flag Message](#) - [Mark as Unread](#) ][Printable View](#)**Subject:** RE:**Date:** Thu, 31 Mar 2005 14:09:39 -0800**From:** "Scott.Jeffries" <Scott.Jeffries@mervyns.com> [View Contact Details](#) [Add Mobile Alert](#)**To:** "Danny Fodiman" <dfodiman@yahoo.com>

I'll make it up in the last 12 months. Nothing else I can do in this season unless my sales plan is raised to accommodate.

-----Original Message-----

**From:** Danny Fodiman [mailto:dfodiman@yahoo.com]**Sent:** Thursday, March 31, 2005 1:36 PM**To:** Scott.Jeffries**Subject:**

Hi Scott Sandy asked me to forward this message to you. He was concerned after the conversation he had with you the other day. Based upon your original phone message which told Sandy that the collections would be \$9,000,000 at cost and active would be \$4,200,000 at cost (13,200,000) over an 18 month period he wanted to know if we would be able to hit the numbers you had given him. That would translate based on your message to \$20,700,000 in retail sales at a 38% maintained guaranteed margin with the initial IMU at 67%. The reason for this concern is the guarantees which we have already given Rampage. I realize that you had said the number could be aggressive and maybe 10% high but our guarantees are substantial. Please bear this in mind. Best Regards, Sandy

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Sent

Bulk [Empty]

Trash [Empty]

**My Folders** [Hide]

Bubble Gum

Charming

Kohls

Neimans

Nordstrom

Todd

doggin it

jf

marsha

sanjay

sara smith

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1 year degreeMortgage rates  
low as 4.625%\*

P 01091